

CARLSON OIL COMPANY, INC.

IBLA 70-133

Decided June 25, 1971

Oil and Gas Leases: Generally – Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Lands Subject To

Where a public land order provides that an area of public land will not be available for the filing of noncompetitive oil and gas lease offers until specific procedures, including the preparation of certain maps and publication of certain notices in the Federal Register, have been followed, and the procedures mentioned in the order have not been implemented, the land is not subject to oil and gas leasing and offers for it are properly rejected.

IBLA 70-133	:	Fairbanks 1842/3100 (220)
	:	
CARLSON OIL COMPANY, INC.	:	Oil and gas lease offers
	:	rejected
	:	
	:	Affirmed

DECISION

Carlson Oil Company, Inc., has appealed to the Secretary of the Interior from a decision of March 23, 1970, by the Office of Appeals and Hearings, Bureau of Land Management, affirming an action by the Fairbanks land office in refusing to accept 54 oil and gas lease offers submitted January 28, 1970, for lands within the Arctic National Wildlife Range. 1/

The land office returned the offers as unacceptable for filing under authority of regulation 43 CFR 3120.3-3(c), 2/ which prohibits the filing of lease offers for wildlife lands until such time as an agreement as to areas to be leased has been approved by the Secretary of the Interior, and notice as to time, place, and manner of filing of simultaneous lease offers for the available lands in the Wildlife Range has been published in the Federal Register.

The reasons given in the present appeal are identical to the reasons advanced by the appellant in its appeal to the Director of the Bureau of Land Management, which were correctly and adequately summarized in the decision below, as follows:

The appellant contends essentially that the land office action of refusing to accept its oil and gas lease offers for lands within the Arctic National Wildlife Range and to

1/ The offers were returned to the offeror unserialized, and refund of the advance rental payments was later authorized at the request of the offeror's attorney.

2/ Since recodified as 43 CFR 3101.3-2(a), (b) (1971).

assign serial numbers to the offers was arbitrary and capricious, denying it the benefits of full adjudication; that the land in the Arctic National Wildlife Range was opened to oil and gas leasing by P.L.O. 1621, especially as neither the application for withdrawal of the wildlife range nor P.L.O. 2214 which established the Arctic National Wildlife Range barred oil and gas leasing; that neither the application for withdrawal nor the P.L.O. 2214 had an adequate land description as required by 43 CFR Part 2311; that the regulation 43 CFR 3120.3-3 is not applicable to the Arctic National Wildlife Range, and finally that P.L.O. 3521 is invalid. It alleges that the lands sought to be leased lie on the western edge of the Arctic National Wildlife Range so that drilling could be accomplished under the leases without entry onto the surface of the range.

The decision below then went on to state that the essence of the present appeal had been presented before by counsel for the appellant and was discussed at length in Inlet Oil Corporation et al., Fairbanks 1842/3120 (January 23, 1969), a decision relating to 70 offers for lands within the Arctic National Wildlife Range; and that the Bureau's position was affirmed by the Department in Mark B. Ringstad et al., Inlet Oil Corporation et al., Robert L. Lawler et al., A-31111, A-31115, A-31134, A-31188 (March 17, 1970).

The Bureau in its decision of January 23, 1969, in Inlet Oil, *supra*, discussed in detail the various public land orders which have affected the lands. However, it is sufficient to say that the order presently controlling the lands involved herein is P.L.O. 3521 of January 5, 1965, 30 F.R. 271, which placed restrictions upon leasing for oil and gas in Northern Alaska, and it is immaterial whether the lands are within or outside of the boundaries of the Arctic National Wildlife Range, which was established by P.L.O. 2214 of December 6, 1960, 25 F.R. 12598.

P.L.O. 3521 provides in pertinent part;

1. None of the public lands within the area described in paragraph 2 of this order that are subject to the noncompetitive leasing provisions of the Mineral Leasing Act of 1920 . . . shall be subject to oil and gas leasing

until approved leasing maps for such lands, or portions thereof, are from time to time prepared, and notices of the time and place of filing thereof and of the availability of the lands for leasing have been published in the Federal Register by the Bureau of Land Management. These notices will describe the lands subject to noncompetitive lease and will provide for a simultaneous filing period of offers to lease

Paragraph 2 of the order describes an extensive area which includes all of the Arctic National Wildlife Range, in addition to other lands. The land description is as follows:

NORTHERN ALASKA

All that part of Alaska lying North of a line extending West from a point at 68 degrees North latitude on the United States-Canadian boundary to 153 degrees West longitude; thence North to 68 degrees 22' North latitude; and thence West to the Arctic Ocean.

The latitudinal and longitudinal boundaries shown on the official township plats of protraction surveys, copies of which plats are in the case record, definitely place the lands described in the 54 lease offers within the area described in paragraph 2 of the order cited above. Therefore, even though the lands described in some or all of the offers may be outside of the boundaries of the Arctic National Wildlife Range, the offers were properly rejected as the prerequisites for leasing required by P.L.O. 3521 have not been carried out. In view of this conclusion it is unnecessary, as indicated in the decision below, to discuss the appellant's objections concerning the alleged erroneous description of the Arctic National Wildlife Range in P.L.O. 2214 and the nonapplicability of 43 CFR 3120.3-3(c).

In pursuing its appeals, appellant asserts that it should be given a preference pursuant to the preference given in Udall v. Tallman, 380 U.S. 1 (1965). Although this contention was not mentioned in the decision below, it is sufficient to say that Tallman is clearly distinguishable from the instant case. Unlike P.L.O. 3521, which is clear in its language, Tallman involved oil and gas lease applications in the Kenai National Moose Range in Alaska, created in 1941 by Executive Order No. 8979, 6 F.R. 6471, which withdrew the lands and provided: "None of the above-described lands excepting

[a described area] shall be subject to settlement, location, sale, or entry, or other disposition . . . under any of the public land laws applicable to Alaska, . . . " P.L.O. 487, issued by the Secretary in 1948, withdrew the lands it covered from "settlement, location, sale or entry." For some time the Secretary has construed these orders as not prohibiting mineral leasing, and the Court deferred to the Secretary's construction as a reasonable one, even though the language in them was possibly susceptible of other interpretation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Edward W. Stuebing, Member

Francis E. Mayhue, Member.

